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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. [redacted] 102

CITY OF CHICAGO, ET AL., *Appellants*

v.

UNITED STATES OF AMERICA, ET AL., *Appellees*

On Appeal From the United States District Court for the Northern District of Illinois

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JURISDICTIONAL STATEMENT

City of Chicago, Tennessee Public Service Commission, Public Utilities Commission of Ohio, Alabama Public Service Commission, State of Louisiana, Mississippi Public Service Commission, Kentucky Railroad Commission, The Metropolitan Government of Nashville and Davidson County, Tennessee, Railway Labor Executives' Association and United Transport

Service Employees (AFL-CIO), appeal from the order of the United States District Court for the Northern District of Illinois-Eastern Division, entered January 8, 1969, dismissing appellants' complaint seeking to set aside and to enjoin findings, decisions and orders of the Interstate Commerce Commission (Commission), relating to the discontinuance by Louisville and Nashville Railroad Company (L&N) of its "Hummingbird" passenger trains between Cincinnati, Ohio and New Orleans, La. (927 miles).

The court below dismissed plaintiffs' complaint on the sole ground that an action may not be brought to review any decision or order of the Commission allowing a passenger train discontinuance pursuant to section 13a(1) of the Interstate Commerce Act, 49 U.S.C. § 13a(1).

OPINIONS BELOW

The opinion of the three-judge court for the Northern District of Illinois was entered January 8, 1969, and is reported at *Tennessee Public Service Commission* v. *United States,* 294 F. Supp. 1106. The opinion and order are set forth herein as Appendix A. The opinion incorporates by reference the opinion entered the same day in the "Georgian" train case, attached as Appendix B to the jurisdictional statement in No. ——, October Term 1968, *City of Chicago, et al.* v. *United States.* The case below was heard jointly with *City of Chicago* v. *United States,* 294 F. Supp. 1103.

The report and order of the Interstate Commerce Commission, Division 3, dated September 3 and served September 6, 1968, were entered in its Finance Docket No. 25047, *Louisville & N.R. Co. Discontinuance of*

Trains, and are reported at 333 I.C.C. 720. The report and order are set forth herein as Appendix B.

The order of the Interstate Commerce Commission, Division 3, upon reconsideration was entered October 31 and served November 4, 1968, and is set forth herein as Appendix C.

JURISDICTION

This suit was brought September 6, 1968 in the three-judge court pursuant to 28 U.S.C. § 1336(a), 1398(a), 1651, 2284, 2321-25, 5 U.S.C. § 702, and 49 U.S.C. § 17(9), to annul and to set aside findings, decisions and orders of the Interstate Commerce Commission entered under 49 U.S.C. § 13a(1), dated September 3 and October 31, 1968.

The order and opinion of the district court dismissing the complaint were entered January 8, 1969.

Notice of appeal was filed in the district court for the Northern District of Illinois-Eastern Division on March 6, 1969.

Jurisdiction of the Supreme Court to review this order by direct appeal is conferred by 28 U.S.C. § 1253 and § 2101(b). Jurisdiction specifically for interstate passenger trains under 49 U.S.C. § 13a(1) is sustained by *City of Williamsport* v. *United States,* 273 F. Supp. 899 (M.D. Pa. 1967), 282 F. Supp. 46 (M.D. Pa. 1968), aff'd *per curiam,* 392 U.S. 642 (1968).

STATUTES INVOLVED

The statutes involved in this case are section 13a(1) of the Interstate Commerce Act, 49 U.S.C. § 13a(1), enacted August 12, 1958, 72 Stat. 571, and 28 U.S.C. 1336(a), and are set forth in Appendix A to the juris-

dictional statement in No. , October Term, 1968, *City of Chicago, et al.* v. *United States.*

QUESTION PRESENTED

Do the U.S. District Courts possess jurisdiction to review decisions and orders of the Interstate Commerce Commission, entered under 49 U.S.C. § 13a(1) after hearing and investigation, where the Commission has found that an interstate passenger train, or a part thereof, is not required by the public convenience and necessity and that continued operation thereof would unduly burden interstate or foreign commerce?

STATEMENT

This appeal involves the "Hummingbird" passenger train.[1] The companion appeal involves the "Georgian" passenger train.[2] A description of the joint "Georgian-Hummingbird" passenger train service is contained in No. , October Term, 1968, *City of Chicago* v. *United States,* and is incorporated herein by reference.

When Chicago & Eastern Illinois Railroad Company (C&EI) was permitted by the Commission to discontinue the operation of the "Georgian" between Chicago, Ill. and Evansville, Ind., thus leaving the "Georgian" to operate only between Evansville, Ind. and Atlanta, Ga., the viability of L&N's "Hummingbird" train was in immediate jeopardy, because a large volume of passengers were carried by the "Georgian" between Chicago, Ill. and points south of Nashville,

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[1] L&N trains Nos. 6 and 7.

[2] C&EI-L&N trains Nos. 93 and 54.

Tenn., which were transferred to the "Hummingbird" train at Nashville, Tenn.

On April 3, 1968 L&N posted and filed notice that it would discontinue the "Hummingbird" over its entire run between Cincinnati, Ohio and New Orleans, La., stating:

> "On February 1, 1968, the Chicago and Eastern Illinois Railroad Company discontinued its passenger trains Nos. 93 and 54 between Chicago, Illinois and Evansville, Indiana, which connected with the L&N passenger trains operating between Evansville, Indiana and Atlanta, Georgia. These latter trains also carried passengers traveling between Chicago, Illinois, stations on the C&EI intermediate to Evansville, Indiana and stations on the L&N served by Nos. 6 and 7 between New Orleans and Nashville, Tennessee. The discontinuance of said C&EI trains resulted in the immediate loss of the bulk of the passenger business handled on trains Nos. 6 and 7 between New Orleans and Cincinnati."

A statement of the subsequent proceedings before the Commission, and the resultant proceedings in the court below, are set forth in the jurisdictional statement in No. , October Term, 1968, *City of Chicago, et al.* v. *United States,* and are incorporated herein by reference.

THE QUESTION PRESENTED IS SUBSTANTIAL

The question presented by this appeal is identical to that presented in No. , October Term, 1968, *City of Chicago, et al.* v. *United States.* The justification presented for the substantiality of that appeal is incorporated herein by reference.

CONCLUSION

Probable jurisdiction should be noted and the judgment below reversed.

Respectfully submitted,

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